NO. 54406-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Douglas Verdier,

Plaintiff/Appellant,

vs.

Gregory Bost and Laurie Bost,

Defendants/Respondents,

vs.

Todd Verdier,

Counterclaim Defendant/Appellant.

APPEAL FROM THE SUPERIOR COURT

HONORABLE JUDGE FAIRGRIEVE

SECOND AMENDED REBUTTAL BRIEF

TODD VERDIER
36105 NE Washougal River Rd.
Washougal, Wash
360 835 3168

TABLE OF AUTHORITIES

Cases

Other authorities

Todd Verdier submits this rebuttal brief and requests an appeals hearingin this matter. The settlement ruling is void it should be vacated by the appeals court in regard to Todd Verdier.

THE CR2A HEARING VIOLATED RCW 4.22.060 AND 19.36.010

The Bosts had a duty to comply with RCW 4.22.060. The Bosts and Douglas Verdier and trial court did not circulate a signed settlement document and have a reasonableness hearing at least 5 days after. Todd Verdier was in Florida and was never shown a settlement document. He made an offer that was destroyed with many counteroffers. The court should have not aided a violation of the statute it is an abuse of discretion. Todd was expected to make sense of no actual clear written signed offer by his attorney who was partying in New Orleans. Todd was never in receipt of a written offer signed by anyone, none were circulated to the court and to the other parties. Less than 13 hours went by before the 3 May hearing and Todd. This did not comply with statutory requirements and Violated Todd Verdier's due process right to a 5 day notice and reasonableness hearing. A similar case was reversed. Quoting Fraser v. Beutel, 56 Wn. App. 725 : "The second and more basic reason is that due process requires that the released but nonsettling defendant have sufficient notice of the reasonableness hearing to allow it to participate and raise issues challenging the settlement as too high. Without such notice, the nonsettling defendant is not bound by the determination of

reasonableness. Our examination of the facts convinces us that the Brass Bucket did not receive sufficient notice of the reasonableness hearing." Fraser Quotes:

RCW 4.22.060 reads:

> (1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant *shall give five days' written notice* of such intent to all other parties and the court... *The notice shall contain a copy of the proposed agreement.* A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence.[1]

(Fraser v. Beutel, 56 Wn. App. 725, 730–31, 785 P.2d 470, 473–74 (1990)." No such document was circulated and the court held no reasonableness hearing. 3 May 2019 was the day for pretrial motions. The trial started Monday the 6th. The respondants have not produced a copy of a circulated settlement and proof that it was supplied to the court because they did not comply with the statute.

Todd Verdier never got a transcript of the hearing until early July 2019. Todds own attorney was in New Orleans and would not provide a transcript for two months. Todd could not assent to an unwritten settlement hearing that happened with less than 24 hr notice. Per RCW 4.22.060 a party seeking release shall prepare a release, sign it, and circulate it to all parties and will file it in the court where a reasonableness hearing will be held. None of the statutory conditions were complied with. Todd did not sign a settlement. Bosts did not sign one. Because the Bosts did not file a signed release and distribute it, any ordered release violates the above statute and is void as against public policy. It is at least an abuse of

discretion by the court. "The meaning of a statute is a question of law reviewed de novo. State v. Breazeale, 144 Wash.2d 829, 837, 31 P.3d 1155 (2001); State v. J.M., 144 Wash.2d 472, 480, 28 P.3d 720 (2001). The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expres-sion of legislative intent. J.M., 144 Wash.2d at 480, 28 P.3d 720." The settlement ruling is void it should be vacated by the appeals court in regard to Todd Verdier.

The Bosts did not comply with RCW 19.36.010 which makes the alleged settlement agreement void . 19.36.010 says: (In the following cases, specified in this section, any agreement, contract, and promise shall be void, unless such agreement, contract, or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him or her lawfully authorized, that is to say: (2) every special promise to answer for the debt, default, or misdoings of another person. The lawsuit alleged misdoings.

MY ATTORNEY DID NOT ATTEND THE CR2a HEARING

John Barton and Lowell McKelvey were not my attorneys. Levi Bendele did not get my permission to substitute another attorney who knew nothing about me or

my case. Barton had only minimally written a motion for video appearance about 60 days before. He had never talked to me about any of the broader details of the case but drafting a 1.5 page skype motion .

"The relationship between attorney and client is a fiduciary, confidential relationship of the very highest character that has been jealously guarded and restricted to only the parties involved, so that the attorney cannot substitute another attorney in his place without the client's permission;(Kommavongsa v. Haskell, 67 P. 3d 1068). Bendele was my attorney. Bendele could not delegate his fiduciary duty , without his clients permission, because he was the only one that understood the case. Todd never agreed to allow Barton to be substituted. Bendele made admission and made Todd Verdier believe that he was my attorney.

Kommavongsa quotes Goodley v. Wank & Wank, Inc., 62 Cal.App.3d 389, 395–97, 133

Cal.Rptr. 83 (1976) below.

" Because of the inherent character of the attorney-client relationship, it has been jealously guarded and restricted to only the parties involved. For example, so personal and highly confidential is the relationship and so personal are the services performed by the attorney that his authority, in the ab-sence of exceptional justifying circumstances, is not delegable to other counsel without the client's permission" (See Taylor v. Black Diamond Coal M. Co., 86 Cal.

589, 590 [25 P. 51].).

THE BOSTS HAD NO INTENT TO BE BOUND ON 3 MAY

The trial court and parties knew there was no intent to be bound many counteroffers were sent back and forth after 3 May 2019. Therefore the parties intent to be bound was not sufficient and this is shown because the parties said at the 3 May hearing that it was a rough agreement that will be hashed out. To form a contract an intent to be bound must shown. Quoting Pryde, "To satisfy CR 2A through an informal writing, "[w]e must be able to conclude that the parties agreed to the subject matter; all of the provisions of the agreement were set out in the writings; and 'the parties intended a binding agreement prior to the time of the signing and delivery of a formal contract.' " *Evans,* 136 Wn.App. at 476, (quoting *Morris,* 69 Wn.App. at 869). The determination on this point must be made under the summary judgment standard based on the affidavits and the purported agreement. *Ferree* 71 Wn.App. at 43. If the writing requirement was not satisfied by this evidence, then setting the hearing was an error of law."(Pryde v. Bjorn, 141 Wn. App. 1027 (2007). Contract principles apply to interpretations of CR 2A agreements. Allstot v. Edwards, 114 Wn.

App. 625, 636, 60 P.3d 601 (2002), review denied, 149 Wn.2d 1028 (2003). Lowell McKelvey was not Todd Verdier's attorney. McKelvey said the email had the "rough terms of the settlement" (RP, May 3 2019,pg4). McKelvey made an admission that "The terms of which will be distilled to a release in the next week or so are these" (RP, May 3 2019,pg 4). The terms were not agreed to yet per McKelveys admission and adopted by the Bosts. *See Pac. Cascade Corp. v. Nimmer,* 25 Wash.App. 552, 556, 608 P.2d 266 (1980) (holding an intention to do something "is evidence of a future contractual intent, not the present contractual intent essential to an operative offer" . The trial court admitted it was only a "sort of agreement"(RP, 3 May 2019,pg8). The actual release had not been drafted. Mckelvey says "The Verdier lawyers are going to prepare a draft release next week."(RP 3 May 2019,pg 9). A draft implies a not yet completed writing project.

Bosts have admitted that "Counsel informed the court that they intended to reduce the terms of the settlement to writing" Id at 8:23-9:5. Counsel for the Bosts have therefore admitted that there were further counteroffers and negotiations at page 4 of their answering brief. As the complete terms had not been negotiated completely.

McKelvey who is not Todd Verdier's lawyer then says. "I'm sure it will be argued over"(RP 3 May 2019, pg 9). Todd Verdier never

received a signed copy of the alleged agreement. There was no purported agreement produced by McKelvey until November 2019. It was not shared with Todd.

Bendele was not my attorney by November 15th. I was without an attorney. "We review a decision regarding the enforcement of a settlement agreement de novo. *Lavigne v. Green,* 106 Wash.App. 12, 16, 23 P.3d 515 (2001). "The trial court follows summary judgment procedures when a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed." *Condon v. Condon,* 177 Wash.2d 150, 161–62, 298 P.3d 86 (2013). The trial court must view the evidence in the light most favorable to the nonmoving party and "determine whether reasonable minds could reach but one conclusion." *Ferree,* 71 Wash.App. at 44, 856 P.2d 706. (Cruz v. Chavez, 186 Wn. App. 913, 920, 347 P.3d 912, 915–16 (2015).

Todd Verdier disputed the alleged agreement as soon as he saw the transcript in July 2019. In open court Todd Verdier notified the judge that he did not assent to the alleged agreement. The trial court could reach but one conclusion. The alleged agreement which was not yet drafted or agreed to was disputed. "Writings must contain a clear

expression of the terms and an intent to be bound",(Pryde v Bjorn, 141 Wash.App. 1027)

The Bosts have shown no affidavits that show an intent to be bound and they have made many admissions that the continued to negotiate and counteroffer. They were the moving party.

THE BOSTS MADE COUNTEROFFERS AFTER 3 MAY 2019

The Bosts had no intent to be bound because they made multiple counteroffers. Bosts attorney Leanne McDonald wanted a change 24 minutes after my offer. **This is a counteroffer extinguishing my offer.** Counsel for the Bosts have admitted that there were further counteroffers and negotiations at page 4 of their answering brief. Steringer writes that" Todd Verdier filed a response raising "concerns" he had "regarding the Bosts' attempts to change and add terms that were never mentioned in the settlement (alleged)agreement read into the court record on May 3, 2019." CP 311 at 1." This is a binding admission on the Bosts of counteroffers and intent not to be bound. The Bosts in their answer do not deny that there were "attempts to change and add terms" . They therefore make admission that there were counteroffers. Todd never made another offer. A 29 May(1151 AM) email from Leanne McDonald Bosts attorney stated:

Jennie and I have edited the proposed settlement document and it is attached. Please let us know this week if this is acceptable. We've put an expiration date on the document of June 6 in order to keep things moving,

> An included clause stated:
> ". The Verdiers will not assist or support co-plaintiff Andrew Long, directly or indirectly, in any way whatsover, in any further proceedings in District Court case 3:18-cv-05043-BHS or in the appeal to the Ninth Circuit in case 19-35453. "

This clause was not read into the record on 3 May . It is a counteroffer. These counteroffers and negotiations continued until January 2020. The trial judge appreciated that negotiations were on going on 15 November.(RP 15 Nov 2019 Pg 14)"Well, first of all, I appreciate the fact that the parties are still actively negotiating this issue". The judge admits a settlement agreement is still being negotiated. Therefore no intent to be bound on 3 May 2019.

Bosts adopted admissions that fresh counteroffers had been presented by the Bosts just before 15 November: Todd was self represented and did not receive the new counteroffer/amended proposals. (RP 15 Nov 2019 , pg 13 at line21) Mckelvey states: ("And then exhibit 3 is Ms. Brickers recent red line additions to my settlement agreement which we don't have any objections to".) Todd was Pro se and had not received them. Todd Verdier did object to those revisions as they were counteroffers. "The acceptance of an offer is always required to be identical with the offer, or there is no meeting of the minds and no contract." Blue Mt. Constr. Co. v. Grant Cy. Sch. Dist. 150-204, 49 Wn.2d 685, 688, 306 P.2d 209 (1957).

The judge made an admission himself that negotiations were happening with counteroffers and push and pull. The trial judge appreciated that negotiations were on going on . He could not have concluded that an intent to be bound had occurred

on 3 May 2019. Todd was not negotiating but the Bosts, Mckelvey and AmFam were(adding to the added clauses). The summary judgement standard was not met. The court had notice of a dispute.

THE ALLEGED SETTLEMENT AGREEMENT WAS NOT READ INTO THE RECORD AS REQUIRED AT THE ALLEGED CR2A HEARING

Per Lowell McKelveys binding judicial admission. Where the Bosts attorneys were present and agreed as an adoptive admission. Lowell McKelvey stated on(pg 13, RP 15 Nov 2019): "In retrospect I wish I had read it verbatim-- into the record before your honor." Before that on (page 13, RP 15 Nov 2019) Mckelvey stated that "that was poorly worded—but the May 3rd email that is the basis for the settlement agreement which I then read almost verbatim". The same agreement must be read into the record. The CR2a court rule states: " No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record" per CR2a. The same mirror image verbatim agreement was not read into the record pursuant to CR2a. Bosts adopted the above admissions because they did not speak up. They did not actively speak up because they were still negotiating.

Lowell McKelvey was not Todd Verdier's attorney. McKelvey said the email had the "rough terms of the settlement" (RP, May 3 2019,pg4). McKelvey made

an admission that "The terms of,which will be distilled to a release in the next week or so are these" (RP, May 3 2019,pg 4). The trial court admitted it was only a "sort of agreement"(RP, 3 May 2019,pg8). The actual release had not been drafted. Mckelvey says "The Verdier lawyers are going to prepare a draft release next week."(RP 3 May 2019,pg 9)

McKelvey who is not Todd Verdier's lawyer then says. "I'm sure it will be argued over"(RP 3 May 2019, pg 9). There is no evidence that my attorney saw these emails. Todd Verdier saw no emails that were being roughed out. The 3 May hearing did not represent an intent to be bound. The 3 May 2019 reading was not a same or verbatim mirror image of what the emails said. It was the beginning of negotiations. CR2a is under contractual principles. Settlement agreements are governed by general principles of contract law. Stottlemyre v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383, review denied, 100 Wn.2d 1015 (1983).

Because CR2a is to be under contractual principles the "agreement to agree "is not enforceable as a contract under Washington Law. "We adhere to our longstanding jurisprudence that agreements to agree are unenforceable." (Keystone Land & Dev. Co. v. Xerox Corp.,2004, 152 Wash. 2d 171).

Quoting Pryde v. Bjorn, 141 Wn. App. 1027 (2007). "To this end, CR 2A should be applied literally. If an agreement is not made on the record in open court

or memorialized in a writing signed by the disputing party, CR 2A precludes enforcement, whether or not common law requirements are met. *In re Ferree,* 71 Wn.App. at 40. "Noncompliance with the rule ... leaves the court with no alternative. It must disregard the conflicting evidence." *Eddelman,* 45 Wn.2d at 432 (predecessor rule). If either the genuine dispute or the recording requirement was not satisfied, the trial court's decision to hold an evidentiary hearing was an error of law."

Their was a genuine dispute. Todd Verdier disputed that he assented to what was said on May 3, 2019. Todd refused to sign. The recording requirement was not satisfied because Lowell McKelvey and Bob Steringer agreed that a verbatim version of the alleged record was not read into the record. Todd Verdier agrees that the recording requirement was not met. Therefore the recording requirement was not met. There never was an actual evidentiary hearing held as far as I know in the Verdier v Bost case.

AGREEMENTS TO AGREE ARE NOT ENFORCEABLE

Additionally since CR2a is to be under contractual principles the an "agreement to agree "is not enforceable as a contract under Washington Law. "We adhere to our

longstanding jurisprudence that agreements to agree are unenforceable." (Keystone Land & Dev. Co. v. Xerox Corp.,2004, 152 Wash. 2d 171).

Agreements to agree don't show that the parties have an intent to be bound. At most, the statements would be a manifestation of the parties intention to negotiate with each other. "There is no objective manifestation by Xerox of an intent to be bound if Keystone accepts the modifications. *See Pac. Cascade Corp. v. Nimmer,* 25 Wash.App. 552, 556, 608 P.2d 266 (1980) (holding an intention to do something "is evidence of a future contractual intent, *not the present contractual intent essential to an operative offer"*) (emphasis added). On the contrary, the statement evidences an intent not to be bound by expressly referencing the need for further negotiations. *See Arcadian Phosphates, Inc. v. Arcadian Corp.,* 884 F.2d 69, 72 (2d Cir.1989) (holding "reference to a binding sales agreement to be completed at some future date" is evidence of a present intent *not* to be bound). Bosts attorney has not stated that Bosts had an intent to be bound after 3 May 2019. The Bosts immediately filed for costs in there federal case against CD VERDIER though 3 May they said theywould not.

"Second, Kidder states that if Keystone acknowledges acceptance of the modifications to its proposal "we can then proceed immediately to draft the Purchase and Sale Agreement for review and execution." App. Again, this statement does not manifest a present contractual intent to be bound upon

Keystone's acceptance. *See Nimmer,* 25 Wash.App. at 556, 608 P.2d 266. Rather, the statement is an objective manifestation of Xerox's intent not to be bound because of its express reference to a future binding agreement being "review[ed] and execut[ed]." App.; *see Arcadian,* 884 F.2d at 72.(Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 179, 94 P.3d 945, 950 (2004)

Lowell McKelvey was not Todd Verdier's attorney. McKelvey said the email had the "rough terms of the settlement" (RP, May 3 2019,pg4). McKelvey made an admission that "The terms of,which will be distilled to a release in the next week or so are these" (RP, May 3 2019,pg 4). "On the contrary, the statement evidences an intent not to be bound by expressly referencing the need for further negotiations. *See Arcadian Phosphates, Inc. v. Arcadian Corp.,* 884 F.2d 69, 72 (2d Cir.1989) " The trial court said it was only a "sort of agreement"(RP, 3 May 2019,pg8). The actual release had not been drafted and was being negotiated evn in November.

THE BOSTS HAVE LIED TO THE APPEALS COURT IN THEIR REPLY

The Bosts attorneys have edited emails to remove words in order to

fabricate an approval and lie to the appeals court. The "ok" in Todds email offer was signifying The subject matter of proposed settlement. "the 2013 matter filed in Clark County"

Emails were put in the wrong order in their reply and on the January 10,2020(RP Jan. 10 2020, pg 81 line 13 to 23) Todd Verdier pointed this out on the stand. They abandoned the questioning but bring it back up in their respondents brief.

THE BOSTS MADE ADOPTIVE ADMISSIONS THAT A VERBATIM AGREEMENT WAS NOT READ INTO COURT PER CR2A

Per Lowell McKelveys binding judicial admission on 15 November. Where the Bosts attorneys were present and agreed as an adoptive admission to McKelveys statement. Lowell McKelvey stated on(pg 13, RP 15 Nov 2019): "In retrospect I wish I had read it verbatim-- into the record before your honor." Bosts attorneys said nothing for many minutes and then asked something about scheduling(RP 15 Nov ,pg 16). He appeared to agree that it was not read verbatim or the "same" as the rule states. In silence they adopted the position that on May 3 The alleged CR2a reading was not the verbatim, same, or mirror image. Before that on (page

13, RP 15 Nov 2019) Mckelvey stated that "that was poorly worded—but the May 3rd email that is the basis for the settlement agreement which I then read almost verbatim".

A party-opponent may manifest adoption of a statement in words or gestures. See, e.g., State v. Lounsbery, 74 Wn.2d 659, 445 P.2d 1017 (1968) A party can also manifest adoption of a statement by complete silence. See, e.g., State v. Pisauro, 14 Wn. App. 217, 540 P.2d 447 (1975) (admission by silence when witness asked whether guns offered for sale were stolen and defendant failed to reply); State v. Goodwin, 119 Wash. 551*551 135, 204 P. 769 (1922) (statement by victim of explosion that defendant "did it" was type of accusation to which innocent person would reply).

THE COURT ALLOWED DAMAGES FOR ALLEGED MISDOINGS THAT ARE NOT CAUSES OF ACTION PURSUANT TO PUBLIC POLICY

The respondents allege a 1978 water contract. It is against public policy to get emotional harm damages for a contractual breach in Washington state; Requiring vacating.

THE COURT CREATED A VOID B PLAN PUBLIC WATER SYSTEM THAT VIOLATES PUBLIC POLICY

The trial court created a B plan public water system, in September 2018, that does not comply with public policy and also does not comply with the current WAC 173-528-080. In December 2000 Coulthard was not the well owner and was denied a 2nd connection to36115 NE Washougal river Rd (Bosts) to get water from the shallow, noncompliant, and close to the Washougal River well at 36105 NE Washougal River Rd. Coulthard made no appeal(Exhibit D, CP 367). The Washougal River is listed in table III at WAC 173-528-070. The entire Washougal basin is closed to new ground water appropriation per the 070 WAC. Because there was no legal appropriation of water from 2000 to 2018 the 2018 Trial court order still had to comply with the current law as it was attempting to create a new legal appropriation. WAC 173-528-080 says that even exempt wells must comply with all of the requirements of WAC 173-528-080 and WAC 173-528-070. WAC 173-528-080 does not allow even exempt B plan systems wells to expand in restricted protected surface and groundwaters areas. The Bosts talk as if two wells can be connected in Clark County without approval, this may be true but not on the river basins listed in 173-528-070 or their tributaries. Since December 2000 Coulthard and then Bost have known their connection to the well was not allowed. A new surface or groundwater appropriation (including any permit-exempt withdrawal) is now restricted from the headwaters of the Washougal basin to its mouth according to that table to preserve stream flows. The Verdier well is in that zone. The Verdier

well is less than 140 feet from the river, it is a 23ft. GWI well. The well draws from a now subterranean spring that goes directly to the Washougal River. The Washougal is a spawning ground for endangered species including salmonids. The trial court created a new use, that did not comply with WAC 173-528 070 and 080; because it was previously denied. WAC 173 528 080 became effective on 19 January 2009. The Trial Court and two parties cannot evade Statute by agreement, contract or order because public policy is thereby violated. "[S]tate agencies may not evade rulemaking by contract."(Failor's Pharmacy v. Dep't of Soc. & Health Servs., 125 Wn.2d 488, 494, 886 P.2d 147, 151 (1994). Trial Courts cannot evade statute." The court cannot on equitable grounds add an exception to the classes to which a statute clearly applies if Congress forbears to do so. Louisville & Nashville R. Co. v. Mottley, 219 U.S. 467 (1911). The Safe Drinking Water Act of 1996 directed state governments to clean up and restrict non-compliant wells. Clark County in 2000 and 2001 did not allow Quality Homes and Coulthard to connect to the 36105 Ard/Verdier well. Any valid contract before that was made invalid by the Federal and State statutes. The 36105 well could not comply with the Federal and Washington State requirements of the time; including the purveyor did not make proper application(Exhibit C, CP367), sanitary zones and engineering did not conform.

Coulthard attempted to get a connection to the 36105 well because it was not mentioned in Coulthards mortgage documents. Timothy Bishop owned the property four owners back. the Bosts owned it later. It went Bishop, Quality Homes, Coulthard, Bost. Bishop conveyed his interest in the property to Quality Homes Renovations, LLC, in 2000. The deed did not mention any rights to an easement or the right to draw water from 36105. Quality Homes Renovations, LLC, then deeded the property to Lee and Patricia Coulthard in 2002. The Coutlhards conveyed the property to Mr. Bost in 2004. These latter deeds also made no mention of any right to draw water or any easement for water pipeline purposes.

THE TRIAL COURT HAD NO SUBJECT MATTER JURISDICTION ON THE 2018 WATER MATTER BECAUSE OF THE LAPSE OF TIME

The Bosts predecessor homeowner controlled an LLC that attempted to get agency authorization for a connection to the 36105 NE Washougal river Rd. well. This was rejected and then 30 days passed. After that 30 days, around mid January 2001, the superior court did not have subject matter jurisdiction over the well connection. Therefore the Superior Court in its order of September 2018 is void and against public policy. "The WAPA authorizes

the superior court to act in a limited appellate capacity to review certain agency actions. In order for the court's appellate jurisdiction to be properly invoked, parties must abide by all the procedural requirements of the act. The act obliges a party appealing an agency action to file a petition for review in the superior court and to serve the petition "on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action...." Failure to comply with these requirements bars the superior court from accepting appellate review for lack of subject matter jurisdiction". Furthermore;" In order for the court's appellate jurisdiction to be properly invoked, parties must abide by all the procedural requirements of the act. The act obliges a party appealing an agency action to file a petition for review in the superior court and to serve the petition "on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action . . . ."Failure to comply with these requirements bars the superior court from accepting appellate review for lack of subject matter jurisdiction.(Muckleshoot Indian Tribe v. Dept. of Ecology, 50 P. 3d 668). The Bosts , 18 years later did not comply with the APA. The agenies were not informed, no engineering, purveyor not proper etc. Interpretation of the 2000 to 01 actions of ecology denying Bosts predecessor a connection to the Verdier well is for the Bosts to disprove.

> The Bosts have not supplied a valid contract, evidence of approvals, or engineering reports or health reports. Bosts have not shown that the purveyor made a valid application. Coulthard at the time was not the purveyor, Ard was. She owned the well. Bosts lie in there answer as to Statutory interpretation at page 31. Bosts say the Verdier well is connected to a farm . I'm unaware that the Bost property is part of a Verdier farm and they have not put forth any evidence of it being a same contiguous farm. That exception does not apply.

"The APA does not permit us to substitute "our judgment for that of the administrative agency in factual matters ..." Franklin Cy. Sheriff's Office v. Sellers, 97 Wn.2d 317, 325, 646 P.2d 113 (1982), cert. denied, 459 U.S. 1106 (1983)." " To reverse an administrative judgment, we must find a fact de-termination "clearly erroneous in view of the entire record as submitted and the public policy contained in the act ..." RCW 34.04.130(6)(e). (Polygon Corporation v. Seattle, 578 P. 2d 1309.(1978).

The trial court reversed an agencies conclusions without subject matter jurisdiction and without a fact determination. It was the Bosts burden to show that the agency was wrong. They did not meet that burden including in respondents reply.

THE TRIAL COURT HAD NO SUBJECT MATTER JURISDICTION OVER THE FEDERAL TRAFFICKING ACTION(TVPA)

The Superior court had no jurisdiction over Federal Trafficking statutes. The Washington Constitution states. "The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court".

Part of the human trafficking act (TVPA)states at 18 USC section 1595 "An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits... in an appropriate district court of the United States. The Superior Court is not a US District court. The Superior court did not have subject matter jurisdiction. It additionally did not utilize the FRCP. The trial court violated Todd Verdiers due process rights and the 14th and 5th amendment when it seized jurisdiction and did not use the FRCP.

18 USC section 1594

A proceeding under this section shall be governed by the Federal Rules of Civil Procedure.

First, "subject-matter jurisdiction, because it involves the court's power to hear a

case, can never be forfeited or waived." United States v. Cotton, 535 U. S. 625, 630 (2002). Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. Ruhrgas AG v. Marathon Oil Co., 526 U. S. 574, 583 (1999).

"And any action by a court without subject-matter jurisdiction is "ultra vires" and therefore void. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574.

Accordingly, subject-matter delineations must be policed by the courts on their *own initiative even at the highest level.* See Steel Co., 523 U.S.83(1998)"Whenever it appears ... that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

ESTOPPEL DOES NOT APPLY TO PUBLIC POLICY OR SUBJECT MATTER JURISDICTION ARGUMENTS

The Bosts contend that an appeal is untimely on the September 18, 2018 court judgement. It is timely because an order or agreement that violates public policy is null and void and can be challenged at any time before the litigation ends and even after. "However, a court has a nondiscretionary duty to vacate a void judgment. Leen, 62 Wn. App. at 478; In re Marriage of Markowski, 50 Wn. App. 633, 635, 749 P.2d 754 (1988); Brickum Inv. Co. v. Vernham Corp., 46 Wn. App. 517, 520,

731 P.2d 533 (1987). The doctrine of estoppel does not apply to orders and contracts that are null and void because they violate public policy. 'The nonenforcement of illegal contracts is a matter of common public interest, and a party to such contract cannot waive his right to set up the defense of illegality in an action thereon by the other party. * * * it becomes the duty of the court to refuse to entertain the action. "* * * The appellants are not estopped to raise the illegality of the contract because of their course of dealing with respondents under the contract. Validity cannot be given to an illegal contract through any principle of estoppel.' (Vedder v. Spellman, 78 Wn.2d 834, 837, 480 P.2d 207, 209 (1971))

TODD VERDIER HAS STANDING

At the time of their third complaint , 27 February 2014, the Bosts included at pages 5 and 6 their 5th and 6th counterclaims that alleged negligent and intentional stress due to(CP 17 and 26) (a, Repeatedly turning off the water to defendents property so that defendents could not obtain water from the shared well,). Todd Verdier is in the zone of violation and uses the water daily. Todd Verdier also has the constitutional right to redress grievances to government that arise from being sued regarding the Bosts alleged water rights. The September 2018 Court ruling (CP 178) specifically orders Todd to not interrupt the water. Todd is a listed defendant

on the title page of the 2018 ruling(CP 178). Todd is injured by water quality decline caused by the Bosts unpermitted use and a ruling by the appeal court can remedy these injuries. Todd resides on the shore of the Washougal and this gives him standing to challenge illegal water withdrawals that adversely effect the river he has enjoyed for 50 years.

"The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity." Walker v. Munro, 124 Wn.2d 402, 419, 879 P.2d 920 (1994). A party must demonstrate that they have suffered or will suffer an "injury in fact." Lakehaven Water and Sewer Dist. v. City of Federal Way, 195 Wn.2d 742,

Todds residence abuts 36115 and the Washougal River. Bosts and their attorney(Leatham) in 2014 filed fabricated documents(CP 58,59). in a motion(water agreement letter). Fabricated documents can't be the basis for a judgement. Todd has standing to challenge.

TODD VERDIER WAS SUED FOR A DUTY WHICH CANT BE THE BASIS OF A LEGAL ACTION

Any cessation of water that Todd Verdier was involved in was done per

Washington Supreme Court guidelines; including duties to mitigate. Todd did the exact thing required by the Washington Supreme court by flipping a switch " it was her duty to minimize her damages by filling up the ditches upon her own land, which she had a perfect right to do, and thus prevent any extension of the injury." (Messenger v Frye, 176 Wash. 291,(1934).

A duty of Todd Verdier to mitigate by shutting unpermitted unpaid water flow off cannot be the basis of damages.

Standard review

APA review is under the "clearly erroneous" standard.

"Whether a court has subject matter jurisdiction is a question of law reviewed de novo.

We review a decision regarding the enforcement of a settlement agreement de novo. *Lavigne v. Green,* 106 Wash.App. 12, 16, 23 P.3d 515 (2001).

"The meaning of a statute is a question of law reviewed de novo. State v.

Breazeale, 144 Wash.2d 829,

Pursuant to the points made in this writing and the opening briefs , CR59 and all other documents supplied to the court of Appeals in this case. The trial courts 2018 Judgement should be amended or vacated as it pertains to Todd Verdier. As to the events of 2019 and 2020 pertaining to Todd Verdier. Todd would request that the court vacate all of the trial courts orders and remand this case for a trial on the merits. Todd also requests that it be found that the trial court did not have subject matter jurisdiction over the well and TVPA. The settlement ruling is void it should be vacated by the appeals court in regard to Todd Verdier.

Todd Verdier, Pro Se_____ September 2021

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Paid 163.00
Receipt # 22208
Initials Erica Kelley

Southwest Washington Health District

SERVING CLARK, KLICKITAT AND SKAMANIA COUNTIES

WP 4589 20001201O1
096420-000

APPLICATION
SMALL PUBLIC WATER SUPPLY

WELL LOCATION ADDRESS: 36105 NE Washougal River Rd

LEGAL DESC: CODE ____ 1/4 NE 1/4 SE SEC. 29 TWN. 2 RGN. 4

SYSTEM MAILING ADDRESS: 36115 NE Washougal River Rd

OWNERS NAME: Quality Home Renovation PHONE: 835-8812

PROPOSED NUMBER OF CONNECTIONS TO WELL: 2
(list name, address, phone of each; use attachment if needed)

1. Roberta Ard
36105 NE Washougal River Rd
835-7019

2. Quality Home Renovations, LLC
36115 NE Washougal River Rd
835-8812

WELL INFORMATION:

TOTAL NUMBER OF PERSONS SERVED (all connected homes): 2

SOURCE TYPE: HAND DUG ____ DRILLED ✓ SPRING ____ SURFACE ____

DEPTH ____ DIAMETER 6 STATIC LEVEL 23 GPM 12

WATER RIGHTS NUMBER: ____ (IF ANY)

ATTACHED TO APPLICATION

- ✓ Well log
- ____ Maintenance agreement
- ____ Plot plan
- ____ Fee
- ____ Pump Test (2 hr/4hr)
- ____ Chemical Analysis
- ____ Other

PURVEYOR RELEASE LETTER

____ City of Vanc	696-8101
____ Clark Public Util.	944-8023
____ Camas	834-3451
____ Washougal	835-8501
____ Meadow Glade	687-3175
____ Battle Ground	687-7131
____ Ridgefield	887-8251
____ La Center	263-2782
____ Yacolt	686-3922

10/1/00
NOTE: Will bring in signed Maintenance agreement

APPLICANTS SIGNATURE: [signature] DATE: 10-00

OW0002541
FA0002879
WA0002597

WP..\FORMS\SMLWATER.APP

[redacted]

SKAMANIA COUNTY HEALTH CENTER
[illegible]

KLICKITAT COUNTY HEALTH CENTER
228 WEST MAIN STREET

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Exhibit C

SOUTHWEST WASHINGTON HEALTH DISTRICT

Preserving, promoting, and protecting health in Clark and Skamania Counties.

Water Availability Verification Evaluation
(WAVE)

Approval Date: December 21, 2000

Water System Location: 36105 NE Washougal River Rd.

Applicant Name: Quality Homes Renovation ID# 2000120191

The above mentioned water system has been inspected and sampled by the Health District on December 4, 2000. Based on samples collected from that date it has been determined this system meets State Board of Health drinking water quality standards for bacteria and nitrate. The reports submitted to our office indicate the water quantity is sufficient to meet minimum requirements, therefore, the Health District is granting approval of this water system for connection to one residence.

Plumbing connected to the well must be flushed and chlorinated prior to use. Proper access to the well needs to be provided for future maintenance needs. To ensure continued water quality the Health District recommends bacterial testing on an annual basis and nitrate testing every three years. This system meets *minimum* water quantity requirements of the Growth Management Act; however, most lending institutions require a quantity of 5 gallons per minute for four hours. It is recommended you consult with them to ensure your system meets their requirements.

Approved By: _____ 12/21/00
Michael McNickle
Environmental Health Supervisor
Date

Clark County Main I ... uver, WA 98663
Skamania Cou ... WA 98648

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Exhibit D

CERTIFICATE OF SERVICE

I hereby certify that on 9September 2021 I filed the foregoing with the Division II Washington State Appeals Clerk of the court and served the following attorneys by placing in the US Mail

David Vinn Pro Se
9 sep 2021

Attorneys for Defendant

Bob Steringer
Harrang Long Gary Rudnick
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Attorney for Plaintiff

Lowell McKelvey
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Portland, Or 97239

Bradley Anderson
Landerholm,PS
805 Broadway st ste 1000
PO Box 1086
Vancouver , Washington

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED at Washougal, Washington, this 9 September, 2021.

Doug Todd Pro Se